

**Inner City Press/Community on the Move
&
Fair Finance Watch**

TEL: 718-716-3540 Fax : 718-583-5204, or (preferred), email: Lee@fairfinancewatch.org

Mail to: P.O. Box 580188, Mt. Carmel Station, Bronx, NY 10458

FACSIMILE TRANSMITTAL FORM

To: Federal Deposit Insurance Corporation
Attn: Chairman Martin J. Gruenberg
Ms. Nancy E. Hall, Regional Director,
and Ms. Linda Ortega, Community Affairs Officer
25 Jessie St, Suite 2300 San Francisco, California 94105
VIA TELECOPIER to 415-808-7937

Re: Initial comment opposing the proposal by The Home
Depot, Inc. to acquire control of EnerBank USA

FROM: Matthew Lee, Esq., Executive Director

DATE: May 29-30, 2006

of Pages: This transmittal sheet; 9-page timely initial comment and requests = 10

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May 30, 2006

VIA TELECOPIER to 415-808-7937

Federal Deposit Insurance Corporation
Attn: Chairman Martin J. Gruenberg
Ms. Nancy E. Hall, Regional Director,
and Ms. Linda Ortega, Community Affairs Officer
25 Jessie St, Suite 2300 San Francisco, California 94105

Re: Initial comment opposing the proposal by The Home
Depot, Inc. to acquire control of EnerBank USA

Dear Director Gruenberg, Ms. Hall, Ms. Ortega, others:

On behalf of Inner City Press/Community on the Move and its members and affiliates, and the Fair Finance Watch (collectively, "ICP"), this is an initial comment opposing, and requesting public hearings on and a complete and supplemented copy of, the applications by The Home Depot, Inc. to acquire control of EnerBank USA.

Many adverse issues surround Home Depot Inc. at this time, militating for public hearings on this proposal. These issues include findings of employment discrimination, detailed allegations of accounting fraud, and dramatic over-compensation of management and contempt for shareholders. As was not done in Wal-Mart, the CRA Strategic Plan alluded to in Home Depot's application should be made available well before the public hearing, so that it can be testified about. The comment period must be formally extended until the CRA plan is filed.

Most recently with Home Depot, its over-compensation of its executives, the failure of its outside directors to even show up for the annual meeting, and a demonstrated contempt for the public, all militate for hearings and the denial of

Mail: PO Box 580188, Mt. Carmel Sta, BX NY 10458 Tel 718 716-3540; lee@FairFinanceWatch.org

this application. As reported in the Atlanta Journal-Constitution of May 25, 2006,

"At issue are the steadily rising pay packages awarded to Home Depot Chairman and Chief Executive Bob Nardelli, despite an overall drop in the company's stock price in his five years at the helm. Nardelli last year got about \$29.7 million in salary, bonus and restricted stock awards, a 4.3 percent boost. During his entire tenure, he's gotten packages worth \$154.3 million --- not counting the value of stock options. His package is well over double that of Wal-Mart's CEO and dwarfs that of the CEO at archrival Lowe's, which has posted stock gains of more than 170 percent this decade."

Home Depot is also being sued for customer abuse. See, e.g., Atlanta Journal-Constitution of May 24, 2006, "Home Depot named in grout sealer suit," by Patti Bond:

"Home Depot has been named in a \$111 million personal injury lawsuit involving a defective grout sealer product that was recalled last summer. Lilburn resident James Flynn claims he suffered respiratory problems and permanent lung damage after exposure to the fumes in a product known as 'Tile Perfect Stand 'n Seal 'Spray On' Grout Sealer,' according to a lawsuit recently filed in Cobb County State Court."

Home Depot is also being sued for accounting fraud. See, e.g., NY Post of May 18, 2006, "DEPOT-SITION - CLASS-ACTION SUIT ALLEGES FRAUD AT HOME RETAILER" --

"Home Depot is the subject of a class-action securities lawsuit that alleges the company falsified financial results by improperly inflating the amount of money it charged vendors to cover the cost of damaged or defective merchandise. The complaint, filed by John Mizzaro, who purchased Home Depot shares from May 29, 2001, to Feb. 22, 2005, also names members of Home Depot senior management as defendants, including Chief Executive Robert Nardelli, Chief Financial Officer Carol

Tomé and co-founder Kenneth Langone, among others. During fiscal 2001 to 2004, Home Depot "was engaged in a scheme to inflate the company's earnings through fraudulent RTV practices," according to the complaint, filed in United States District Court for the Northern District of Georgia. The complaint also states that Home Depot derived a "material portion of its revenues and profits" from this so-called return-to-vendor practice, and that the company had deficient internal controls."

It is particularly in this light that ICP is timely demanding access to all improperly withheld portions of the application, including the business plan and all (now contested) financials.

On an application to acquire control of a bank or industrial loan company, the Federal Deposit Insurance Corporation must consider a range of factors, including managerial integrity, compliance with law and regulation, such as anti-discrimination provisions, including as a predictor of Community Reinvestment Act performance.

Significantly, including as a predictor of (weak) Community Reinvestment Act and fair lending performance, Home Depot has recently been found guilty of employment discrimination by a federal appeals court. See, e.g., Business Insurance of May 1, 2006 , "Sunday work rule constitutes bias"

"According to the opinion, Mr. Baker was initially permitted to take Sundays off by supervisors at the Henrietta, N.Y., Home Depot store in which he worked. A new store manager objected, though, and offered him the option of a later shift on Sundays, which Mr. Baker refused. He also refused to work part time, which would have permitted him to take Sundays off, explaining he needed to work full time. The

supervisor said Mr. Baker also rejected a suggestion that he find another sales associate to swap shifts with him. Mr. Baker was subsequently terminated for unexcused absences. He sued the Atlanta-based Home Depot, charging religious discrimination. The shift change "offered to Baker was no accommodation at all because, although it would allow him to attend morning church services, it would not permit him to observe his religious requirement to abstain from work totally on Sundays," says the unanimous opinion by the three-judge panel. Simply put, "the offered accommodation cannot be considered reasonable...because it does not eliminate the conflict between the employment requirement and the religious practice," said the court, in quoting a 1996 opinion. The opinion adds, "Although we are constrained to vacate the judgment of the district court because of the inadequacy of the offer of shift change on Sundays as an accommodation, we express here no opinion as to whether Home Depot's offer of part-time employment or its allowance of the exchange of shifts with other employees would constitute reasonable accommodations. We leave the consideration of those matters to the district court." The opinion notes also that the Home Depot says giving Mr. Baker Sundays off would place an undue burden upon it. "It contends that Baker's request for Sundays off would require his co-workers to shoulder a larger workload of undesirable shifts, which, in turn, fosters lower morale and decreased productivity, while at the same time increasing the likelihood that the employer would have to pay overtime premiums," says the opinion. "We leave this defense also for consideration by the district court in the first instance." Briefs in support of Mr. Baker were filed by the U.S. Equal Employment Opportunity Commission and the U.S. Dept. of Justice, Civil Rights Division, in Washington and by the American Jewish Congress in New York. Bradley Baker, plaintiff-appellant, vs. The Home Depot, defendant-appellee, United States Court of Appeals for the 2nd Circuit, No. 05-1069-cv.

As simply another example of findings of employment discrimination at Home Depot, see the Bangor (Maine) Daily News, January 24, 2006, "Rights panel rules against Topsham Home Depot" --

"The Home Depot store in Topsham discriminated against a man who had broken his back earlier in life, but The Home Depot in Rockland did not discriminate on the basis of age against two employees of that store, the Maine Human Rights Commission ruled Monday... In the complaint by Patrick Farris, who now lives in Georgia, against The Home Depot store in Topsham, his attorney told the commission a supervisor taunted him over his broken back injury, throwing a pencil on the floor and demanding that he pick it up. When Farris was in pain from the injury, store officials argued in a written submission to the panel, he grimaced as he helped customers. One day, when Farris was in particular pain, he was told not to "punch in" at work because his pain was obvious. The panel ruled this action on the part of The Home Depot equated to a "constructive discharge," which means he was effectively put out of work. The commission voted that reasonable grounds existed for Farris' claim. Complaints that win reasonable grounds rulings from the panel proceed to conciliation. If no settlement is reached, the complainant may proceed to Superior Court, where a financial award may be granted. Peter Sullivan of South China and Karen Claywell of Friendship also filed claims against The Home Depot for their experiences in the Rockland store. The attorney representing the two, Tracy Adamson, argued that Sullivan's peers at the store taunted him about his age, and were aware that he was under a program of improvement on the job. Claywell refused to cooperate with the systematic discrimination, Adamson argued, and suffered on the job because of it....Commission investigator Brenda Haskell told commissioners that while she believed the Rockland branch of the home improvement chain was "a store that went amok," no violations of the Maine Human Rights Act could be demonstrated.

But Home Depot run "amok" must be inquired into by the FDIC, now that Home Depot proposes to acquire control of an insured depository institution.

See also, for the record, NYT of May 27, 2006, "The Board Wore Chicken Suits"

"Mr. Nardelli, you see, has become this year's version of Mr. Overpaid C.E.O. He's earned this status, in part, by the sheer sum of money his board has awarded him in the five years since he was recruited from General Electric to take over Home Depot: \$245 million, including \$37.1 million just this last year. At the same time, Home Depot's stock has fallen 12 percent, while shares of its chief competitor, Lowe's, have risen 173 percent. You've heard of pay for performance? This is the classic definition of pay for pulse... these facts barely begin to get at the richer story that is the Home Depot scandale. There's the lead director, Kenneth G. Langone, who's never met a chief executive he doesn't want to overpay. The cozy board. The other overpaid chief executives who sit on the Home Depot compensation committee, who have every incentive to keep lining Mr. Nardelli's pockets because his good fortune will rebound to them as well. Mr. Nardelli's compensation illustrates precisely what is so offensive about C.E.O. pay: it's a rigged game. Heads I win, tails you lose... 9:45 a.m.: The ballroom doors finally open and a few shareholders and reporters trickle in. But where are all the Home Depot people? The corporate officers? The middle managers? Maybe a few local store managers who might be asked to stand up and take a bow? Nowhere to be seen. There are a few public relations people here and there, helpfully explaining why Mr. Nardelli really, really, really deserves all that money, but otherwise what I mainly see are big, strong men, some wearing Home Depot aprons, who look as if they could be bouncers at a rowdy club. Here's something else strange. In the front of the room, facing the audience, I see two large digital timers. It also seems odd that there is only one seat on each side of the podium. Where are the board members going to sit?

10 a.m.: Mr. Nardelli takes the podium, and the meeting is under way. He is accompanied by two people who sit in the seats next to him -- and no one else. Suddenly, we all understand what's going on: the board isn't coming to the annual meeting! In all my years as a business reporter, I have never seen that before. As Charles Elson, the corporate governance expert at the University of Delaware, will tell me the next morning: "Your one obligation as a director is to show up at the annual meeting. The fact that the directors didn't show up is disgusting."

The first item on the agenda, Mr. Nardelli says, is the election of directors. He invites comments from shareholders. "Questions are limited to one minute and one person," he adds. Sure enough, when the first person gets up to speak, the timer starts counting down. The timer is another new one for me.

"I have a question about board independence and conflicts," says the first questioner - and then proceeds to rattle off a few of the conflicts that afflict the Home Depot board. "What steps will the board take to address these conflicts?" he asks. "This is not the forum in which to address these comments," Mr. Nardelli replies. Mr. Ferlauto steps to the microphone. Again, the timer starts counting down. "If the candidates are

up for election, can we be introduced to them?" he asks. "They are not in attendance today," Mr. Nardelli says.

"I think it is absolutely outrageous that the board is not here," Mr. Ferlauto retorts. "The board is too chicken to face the shareholders." As he speaks, the timer hits zero - and the microphone is shut down. Mr. Ferlauto continues speaking. Two of those big burly men take a step toward him. He sits down.

10:10 a.m. : The meeting moves to its next phase -- the pleadings on behalf of the shareholder proposals. There are eight in all. This time, the speakers are allowed all of three minutes to make their case.

Mr. Ferlauto jumps up to discuss his union's proposal that shareholders be allowed an advisory vote on executive pay. He goes through the litany of Mr. Nardelli's compensation abuses: the guaranteed bonuses, the \$10 million loan that costs the shareholders \$21 million because the company pays the tax on it, and so on. When he has finished, Mr. Nardelli replies matter-of-factly, "The board recommends you reject this proposal."

Two speakers later, a shareholder named Sam Yake stands up to talk about his proposal to have Home Depot separate the job of chief executive and chairman of the board, a practice that many companies have instituted over the last few years. But Mr. Yake is so mad he doesn't really want to talk about his proposal. "I love Home Depot," he says. "I came here wanting to buy more stock. But I am totally offended by the way you are conducting this meeting. Are we even going to have an opportunity to ask questions?"

Mr. Nardelli refuses to answer the question about asking questions. "If this is the way you are conducting this meeting, I can see why G.E. didn't pick you." He storms off. "The board recommends you reject this proposal," Mr. Nardelli says... And so it goes. "This is really disturbing," says one man, referring to the way Mr. Nardelli is conducting the meeting. "It really reflects what we have been reading in the press about the style of this board." The room bursts into applause. "Thank you," Mr. Nardelli says. "The board recommends that you reject this proposal."

Then, the proposals finished, Mr. Nardelli asks the bouncers to hand out voting cards to anyone who wants to vote. But of course the overwhelming majority of shareholders have already voted -- and Mr. Nardelli can't even be bothered to wait for those in the room to hand in their votes.

"It appears that each of the directors has been selected for a one-year term," he says. "A majority of shareholders have supported management recommendations"-- except, he quickly adds, No. 6, the one concerning majority vote. "Ladies and gentlemen, that concludes our meeting." And just like that, he's gone.

10:37 a.m. I look down at my watch and I suddenly realize, Mr. Nardelli did not even

tell his shareholders what the vote totals were, nor did he divulge how well the shareholder proposals did. It's mind-boggling. As for the proposal about majority vote -- the one the company actually lost -- it seems pretty unlikely that Mr. Nardelli and the rest of the board will abide by the wishes of the company's shareholders. If there is one thing the meeting proved, it is that they don't much care what their shareholders think.

Afterward, the words on people's mouths are "appalling," "disgraceful" and "arrogant." I would add one more: contemptuous. I'm sure there are plenty of boards and chief executives who have contempt for their shareholders, but most of them are at least smart enough to keep it to themselves. On Thursday morning, in Wilmington, Del., Mr. Nardelli and the Home Depot board let the world know exactly how it feels about the people for whom they are supposed to work.

One other thing: late yesterday, Home Depot issued a statement that said in part, "While we understand that the approach we took to the annual meeting was a departure from past practice, it should in no way be construed as either a lack of respect for our shareholders or a lessening of our commitment to high standards of corporate governance and transparency." Apparently, Mr. Nardelli and the Home Depot board think their shareholders are stupid, too.

This is not a company, not a management, that should be allowed to acquire control of an insured depository institutions. ICP asks for hearings, and that Home Depot's applications be denied.

ICP is a protestant to these applications, and should be provided copies of all communications regarding the applications, and should be provided an opportunity to participate in any communications between the applicants and your agency. All documents and records related the proposal (on an ongoing basis), and other records in your agency's possession related to the proposal, should be provided as quickly as possible, as they become available, to:

Inner City Press/Community on the Move & Fair Finance Watch
Attn: Matthew Lee, Esq., Executive Director

By FedEx: ICP c/o Ocean Market, 481 E. Tremont, BX NY 10457

All other mail: P.O. Box 580188, Mount Carmel Station, Bronx, New York 10458

Fax No.: (718) 583-5204 E: lee@fairfinancewatch.org

If you have any questions, please immediately
telephone the undersigned, at (718) 716-3540.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Matthew Lee", is written over a horizontal line.

Matthew Lee, Esq., Executive Director
Inner City Press / Fair Finance Watch